



March 31, 2009

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## ENGROSSED HOUSE BILL No. 1376

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DIGEST OF HB 1376 (Updated March 25, 2009 3:05 pm - DI 110)

**Citations Affected:** IC 9-13; IC 9-17; IC 9-23; IC 9-29; noncode.

**Synopsis:** Automotive mobility dealers. Provides that automotive mobility dealers must be licensed with the secretary of state in order to sell, service, or install adapted vehicles. Requires the secretary of state to establish requirements by rule for an initial application for and renewal of an automotive mobility dealer's license. Requires an applicant for a license to be: (1) an automobile auctioneer; (2) a converter manufacturer; (3) a dealer; (4) a distributor; (5) a distributor branch; (6) a distributor representative; (7) a factory branch; (8) a factory representative; (9) a manufacturer; (10) a transfer dealer; (11) a wholesale dealer; or (12) an automotive mobility dealer; to maintain a bond satisfactory to the secretary of state as a condition of licensing and requires that the money received from licenses and permits from certain of these professions be divided among the dealer compliance account, the motor vehicle highway account, and the state police and the attorney general for use in enforcing odometer laws. Makes corresponding changes.

**Effective:** Upon passage; July 1, 2009.

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**GiaQuinta, Dermody, Austin, Bell**

(SENATE SPONSORS — YODER, ARNOLD)

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January 13, 2009, read first time and referred to Committee on Small Business and Economic Development.

February 12, 2009, amended, reported — Do Pass.

February 16, 2009, read second time, amended, ordered engrossed.

February 17, 2009, engrossed. Read third time, passed. Yeas 91, nays 1.

SENATE ACTION

February 19, 2009, read first time and referred to Committee on Commerce, Public Policy and Interstate Cooperation.

March 30, 2009, amended, reported favorably — Do Pass.

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EH 1376—LS 7323/DI 96+



March 31, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1376

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A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 9-13-2-1.4 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]: **Sec. 1.4. "Adapted vehicle" means a new or used vehicle**  
4 **especially designed or modified for use by an individual who is**  
5 **disabled or aged.**

6 SECTION 2. IC 9-13-2-8.5 IS ADDED TO THE INDIANA CODE  
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2009]: **Sec. 8.5. "Automotive mobility dealer" means a person**  
9 **that:**

- 10 (1) **engages exclusively in the business of selling, offering to**  
11 **sell, or soliciting or advertising the sale of adapted vehicles;**  
12 (2) **possesses adapted vehicles exclusively for the purpose of**  
13 **resale, either on the automotive mobility dealer's own account**  
14 **or on behalf of another as the primary or incidental business**  
15 **of the automotive mobility dealer; or**  
16 (3) **engages in the business of:**  
17 (A) **selling, installing, or servicing;**

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(B) offering to sell, install, or service; or  
 (C) soliciting or advertising the sale, installation, or  
 servicing of;  
**equipment or modifications specifically designed to facilitate  
 use or operation of a vehicle by an individual who is disabled  
 or aged.**

SECTION 3. IC 9-13-2-42, AS AMENDED BY P.L.131-2008,  
 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 JULY 1, 2009]: Sec. 42. (a) "Dealer" means, except as otherwise  
 provided in this section, a person who sells to the general public,  
 including a person who sells directly by the Internet or other computer  
 network, at least twelve (12) vehicles each year for delivery in Indiana.  
 The term includes a person who sells off-road vehicles. A dealer must  
 have an established place of business that meets the minimum  
 standards prescribed by the bureau under rules adopted under  
 IC 4-22-2.

(b) The term does not include the following:

- (1) A receiver, trustee, or other person appointed by or acting  
 under the judgment or order of a court.
- (2) A public officer while performing official duties.
- (3) A person who is a dealer solely because of activities as a  
 transfer dealer.

**(4) An automotive mobility dealer.**

(c) "Dealer", for purposes of IC 9-31, means a person that sells to  
 the general public for delivery in Indiana at least six (6):

- (1) boats; or
- (2) trailers:
  - (A) designed and used exclusively for the transportation of  
 watercraft; and
  - (B) sold in general association with the sale of watercraft;  
 per year.

SECTION 4. IC 9-13-2-97 IS AMENDED TO READ AS  
 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 97. (a) "Manufacturer"  
 means, except as provided in subsection (b), a person engaged in the  
 business of constructing or assembling vehicles, of a type required to  
 be registered under IC 9-18, at an established place of business. The  
 term does not include a converter manufacturer, **an automotive  
 mobility dealer**, or a recreational vehicle manufacturer.

(b) "Manufacturer", for purposes of IC 9-23, means a person who is  
 engaged in the business of manufacturing or assembling new motor  
 vehicles or major component parts of motor vehicles, or both, and sells  
 new motor vehicles to dealers, wholesale dealers, distributors, or the

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general public. The term includes the following:

- (1) A factory branch office of the manufacturer.
- (2) An authorized representative of the manufacturer.
- (3) A partnership, a firm, an association, a joint venture, a limited liability company, a corporation, or a trust, resident or nonresident, that is controlled by the manufacturer.

The term does not include a converter manufacturer, **an automotive mobility dealer**, or a recreational vehicle manufacturer.

SECTION 5. IC 9-17-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. A manufacturer, a converter manufacturer, **an automotive mobility dealer**, a dealer, or other person may not sell or otherwise dispose of a new motor vehicle to another person, to be used by the other person for purposes of display or resale, without delivering to the other person a manufacturer's certificate of origin under this chapter that indicates the assignments of the certificate of origin necessary to show the ownership of the title to a person who purchases the motor vehicle.

SECTION 6. IC 9-17-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. A manufacturer, a converter manufacturer, **an automotive mobility dealer**, or a dealer must have:

- (1) a certificate of title;
- (2) an assigned certificate of title;
- (3) a manufacturer's certificate of origin; ~~or~~
- (4) an assigned manufacturer's certificate of origin; **or**
- (5) other proof of ownership or evidence of right of possession as determined by the secretary of state;**

for a motor vehicle, semitrailer, or recreational vehicle in the manufacturer's, converter manufacturer's, **automotive mobility dealer's**, or dealer's possession.

SECTION 7. IC 9-17-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. A manufacturer, a converter manufacturer, **an automotive mobility dealer**, or a dealer shall deliver an assigned certificate of title or certificate of origin to a person entitled to the certificate of title or certificate of origin.

SECTION 8. IC 9-17-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) Before obtaining a manufacturer's, a converter manufacturer's, **an automotive mobility dealer's**, or a dealer's license from the bureau, a person must agree to allow a police officer or an authorized representative of the bureau to inspect:

- (1) certificates of origin, certificates of title, assignments of certificates of origin and certificates of title, or other proof of

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ownership or evidence of right of possession as determined by the ~~bureau~~; **secretary of state**; and

(2) motor vehicles, semitrailers, or recreational vehicles that are held for resale by the manufacturer, converter manufacturer, **automotive mobility dealer**, or dealer;

in the manufacturer's, converter manufacturer's, **automotive mobility dealer's**, or dealer's place of business during reasonable business hours.

(b) A certificate of title, a certificate of origin, and any other proof of ownership described under subsection (a):

(1) must be readily available for inspection by or delivery to the proper persons; and

(2) may not be removed from Indiana.

SECTION 9. IC 9-23-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **(a)** The following persons must be licensed under this article to engage in the business of buying or selling motor vehicles:

(1) An automobile auctioneer.

(2) A converter manufacturer.

(3) A dealer.

(4) A distributor.

(5) A distributor branch.

(6) A distributor representative.

(7) A factory branch.

(8) A factory representative.

(9) A manufacturer.

(10) A transfer dealer.

(11) A wholesale dealer.

**(12) An automotive mobility dealer.**

**(b) An automotive mobility dealer who engages in the business of:**

**(1) selling, installing, or servicing;**

**(2) offering to sell, install, or service; or**

**(3) soliciting or advertising the sale, installation, or servicing of;**

**equipment or modifications specifically designed to facilitate use or operation of a vehicle by an individual who is disabled or aged must be licensed under this article.**

SECTION 10. IC 9-23-2-2, AS AMENDED BY P.L.184-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) An application for a license under this chapter must:

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(1) be accompanied by the fee required under IC 9-29-8;  
 (2) be on a form prescribed by the secretary of state; ~~and~~  
 (3) contain the information the secretary of state considers necessary to enable the secretary of state to determine fully the following information:

(A) The qualifications and eligibility of the applicant to receive the license.

(B) The location of each of the applicant's places of business in Indiana.

(C) The ability of the applicant to conduct properly the business for which the application is submitted; **and**

**(4) contain evidence of the bond required in subsection (e).**

(b) An application for a license as a dealer must show whether the applicant proposes to sell new or used motor vehicles, or both.

(c) An applicant who proposes to use the Internet or other computer network in aid of its sale of motor vehicles to consumers in Indiana, which activities may result in the creation of business records outside Indiana, shall provide the division with the name, address, and telephone number of the person who has control of those business records. The secretary of state may not issue a license to a dealer who transacts business in this manner who does not have an established place of business in Indiana.

(d) This subsection applies to an application for a license as a dealer in a city having a population of more than ninety thousand (90,000) but less than one hundred five thousand (105,000). The application must include an affidavit from:

(1) the person charged with enforcing a zoning ordinance described in this subsection; or

(2) the zoning enforcement officer under IC 36-7-4, if one exists; who has jurisdiction over the real property where the applicant wants to operate as a dealer. The affidavit must state that the proposed location is zoned for the operation of a dealer's establishment. The applicant may file the affidavit at any time after the filing of the application. However, the secretary of state may not issue a license until the applicant files the affidavit.

**(e) A licensee shall maintain a bond satisfactory to the secretary of state in the amount of twenty-five thousand dollars (\$25,000), which must:**

**(1) be in favor of the state; and**

**(2) secure payment of fines, penalties, costs, and fees assessed by the secretary of state after notice, opportunity for a hearing, and opportunity for judicial review, in addition to**

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securing the payment of damages to a person aggrieved by a violation of this chapter by the licensee after a judgment has been issued.

(f) Service shall be made in accordance with the Indiana Rules of Trial Procedure.

SECTION 11. IC 9-23-2-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5.5. The secretary of state shall, by rule adopted under IC 4-22-2, establish requirements for an initial application for and renewal of an automotive mobility dealer's license. The rules must include a requirement that each initial or renewal application for an automotive mobility dealer's license include proof that the applicant is accredited through the Quality Assurance Program of the National Mobility Equipment Dealers Association.**

SECTION 12. IC 9-23-2-5.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5.7. An automotive mobility dealer licensed under this chapter is entitled to:**

- (1) display;
- (2) inventory;
- (3) advertise;
- (4) offer for sale; or
- (5) do any combination of subdivisions (1) through (4) concerning;

**any adapted vehicle.**

SECTION 13. IC 9-23-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. It is an unfair practice for a dealer to sell any new motor vehicle having a trade name, trade or service mark, or related characteristics for which the dealer does not have a franchise in effect at the time of the sale. However, vehicles having more than one (1) or more trade name, service mark, or related characteristic as a result of modification or further manufacture by a manufacturer, ~~or~~ converter manufacturer, **or an automotive mobility dealer** licensed under this article may be sold by a franchisee appointed by that manufacturer, ~~or~~ converter manufacturer, **or automotive mobility dealer.****

SECTION 14. IC 9-23-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2. Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the manufacturer, ~~or the~~ converter manufacturer, **or automotive mobility dealer** is liable for all damage to a new motor vehicle before delivery**

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to a carrier or transporter.

SECTION 15. IC 9-23-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. If a manufacturer, a converter manufacturer, **an automotive mobility dealer**, or a dealer violates or aids, induces, or causes a violation of this title, the manufacturer's, converter manufacturer's, **automotive mobility dealer's**, or dealer's license may be suspended or revoked in the manner provided for the suspension or revocation of licenses of persons operating motor vehicles.

SECTION 16. IC 9-29-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. The fee for a factory representative, a distributor representative, a wholesale dealer, a transfer dealer, ~~or a converter manufacturer~~, **or an automotive mobility dealer** under IC 9-23-2 is twenty dollars (\$20). **The fee for an automotive mobility dealer who:**

(1) **buys or sells vehicles, or both;**

(2) **sells, installs, or services, offers to sell, install, or service, or solicits or advertises the sale, installation, or servicing of equipment or modifications specifically designed to facilitate use or operation of a vehicle by an individual who is disabled or aged; or**

(3) **performs acts described in both subdivisions (1) and (2); is twenty dollars (\$20).**

SECTION 17. IC 9-29-8-7, AS AMENDED BY P.L.106-2008, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. All money collected by the secretary of state from manufacturers, factory branches, distributors, distributor branches, dealers, automobile auctioneers, factory representatives, distributor representatives, wholesale dealers, transfer dealers, converter manufacturers, **automotive mobility dealers**, or brokers for licenses and permit fees under IC 9-23-2 shall be deposited as follows:

(1) Thirty percent (30%) to the dealer compliance account established by IC 9-23-2-18.

(2) ~~Seventy percent (70%)~~ **Forty percent (40%)** to the motor vehicle highway account.

(3) **Twenty percent (20%) to the state police department for use in enforcing odometer laws.**

(4) **Ten percent (10%) to the attorney general for use in enforcing odometer laws.**

SECTION 18. [EFFECTIVE UPON PASSAGE] (a) **Notwithstanding IC 9-23-2-5.5, as added by this act, the secretary of state shall carry out the duties imposed on the secretary of state**

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1 under IC 9-23-2-5.5, as added by this act, under interim written  
2 guidelines approved by the secretary of state.

3 (b) This SECTION expires on the earlier of the following:

4 (1) The date rules are adopted under IC 9-23-2-5.5, as added  
5 by this act.

6 (2) December 31, 2010.

7 SECTION 19. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1376, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 5, line 1, delete "the following:".

Page 5, line 2, delete "(1) Appropriate" and insert "**appropriate**".

Page 5, run in lines 1 through 2.

Page 5, delete line 4.

and when so amended that said bill do pass.

(Reference is to HB 1376 as introduced.)

RESKE, Chair

Committee Vote: yeas 12, nays 0.

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1376 be amended to read as follows:

Page 4, line 41, delete "requirements for automotive mobility dealers" and insert "**a requirement that each initial or renewal application for an automotive mobility dealer's license include proof that the applicant is accredited through the Quality Assurance Program of the National Mobility Equipment Dealers Association.**".

Page 4, delete line 42.

Page 5, line 1, delete "requirements and may include" and insert "**The rules may require**".

(Reference is to HB 1376 as printed February 13, 2009.)

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## COMMITTEE REPORT

Madam President: The Senate Committee on Commerce, Public Policy and Interstate Cooperation, to which was referred House Bill No. 1376, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 23, strike "or".

Page 3, line 24, after "origin;" insert "or

**(5) other proof of ownership or evidence of right of possession as determined by the secretary of state;"**.

Page 3, line 41, after "ownership" insert "**or evidence of right of possession**".

Page 3, line 41, strike "bureau;" and insert "**secretary of state;**".

Page 4, between lines 35 and 36, begin a new paragraph and insert: "SECTION 10. IC 9-23-2-2, AS AMENDED BY P.L.184-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) An application for a license under this chapter must:

- (1) be accompanied by the fee required under IC 9-29-8;
- (2) be on a form prescribed by the secretary of state; ~~and~~
- (3) contain the information the secretary of state considers necessary to enable the secretary of state to determine fully the following information:

(A) The qualifications and eligibility of the applicant to receive the license.

(B) The location of each of the applicant's places of business in Indiana.

(C) The ability of the applicant to conduct properly the business for which the application is submitted; **and**

**(4) contain evidence of the bond required in subsection (e).**

(b) An application for a license as a dealer must show whether the applicant proposes to sell new or used motor vehicles, or both.

(c) An applicant who proposes to use the Internet or other computer network in aid of its sale of motor vehicles to consumers in Indiana, which activities may result in the creation of business records outside Indiana, shall provide the division with the name, address, and telephone number of the person who has control of those business records. The secretary of state may not issue a license to a dealer who transacts business in this manner who does not have an established place of business in Indiana.

(d) This subsection applies to an application for a license as a dealer in a city having a population of more than ninety thousand (90,000) but

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less than one hundred five thousand (105,000). The application must include an affidavit from:

- (1) the person charged with enforcing a zoning ordinance described in this subsection; or
- (2) the zoning enforcement officer under IC 36-7-4, if one exists; who has jurisdiction over the real property where the applicant wants to operate as a dealer. The affidavit must state that the proposed location is zoned for the operation of a dealer's establishment. The applicant may file the affidavit at any time after the filing of the application. However, the secretary of state may not issue a license until the applicant files the affidavit.

**(e) A licensee shall maintain a bond satisfactory to the secretary of state in the amount of twenty-five thousand dollars (\$25,000), which must:**

- (1) be in favor of the state; and**
- (2) secure payment of fines, penalties, costs, and fees assessed by the secretary of state after notice, opportunity for a hearing, and opportunity for judicial review, in addition to securing the payment of damages to a person aggrieved by a violation of this chapter by the licensee after a judgment has been issued.**

**(f) Service shall be made in accordance with the Indiana Rules of Trial Procedure."**

Page 5, line 3, delete "The rules may require appropriate training for".

Page 5, delete line 4.

Page 6, line 23, strike "Seventy percent (70%)" and insert **"Forty percent (40%)"**.

Page 6, between lines 23 and 24, begin a new line block indented and insert:

**"(3) Twenty percent (20%) to the state police department for use in enforcing odometer laws.**

**(4) Ten percent (10%) to the attorney general for use in enforcing odometer laws."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1376 as reprinted February 17, 2009.)

ALTING, Chairperson

Committee Vote: Yeas 11, Nays 0.

**EH 1376—LS 7323/DI 96+**



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